Sing Lian Sdn Bhd & Ors v Lim Jit Teng @ Lim Tin Teng & Ors

HIGH COURT (MELAKA) — CIVIL SUIT NO MT1–22–47 OF 2005
LOW HOP BING J
30 JUNE 2006

Civil Procedure — Injunction — Interim injunction to restrain defendant from acting as director of companies — Principles to be applied — Whether justice of case favoured plaintiffs

Companies and Corporations — Meetings — Minutes — Whether minutes could be contradicted or supplemented by other evidence — Companies Act 1965 s 156(2), (3)

The second to seventh plaintiffs ('P2 to P7') were the directors of the first plaintiff ('the company') and also its majority shareholders while the first to eighth defendants ('D1 to D8') were the minority shareholders. The ninth defendant ('D9') was the proxy of Tan Soon Hin Holdings Sdn Bhd ('Tan Soon Hin Holdings'), while the tenth defendant ('D10') was purportedly the corporate representative of Singapore Johore Express Ltd ('Singapore Johore Express').

The plaintiffs and defendants had, in relation to the company, commenced various actions against each other. At a company meeting on 9 April 2005 ('the purported meeting') chaired by D1, D1 and D7 had unilaterally: (1) refused to recognise P2 to P7 as the company's directors and declared that P2 to P7 were no longer directors; and (2) declared D7 to D10 as the company's directors without any election process or voting.

The plaintiff in this suit applied for an interlocutory injunction that the D7 to D10 defendants be restrained until the final disposal of this suit from acting and/or representing themselves to be, or exercising any of the functions or performing any duties of, directors or officers of the company or in any capacity whatsoever including from holding themselves out whether directly or indirectly as directors or officers or in any other capacity whatsoever of the company. The defendants applied to set aside, dismiss or stay the company's action. It was submitted for the plaintiffs that justice of the case was in favour of the grant of the injunction pending the trial of this action.

The defendants raised a preliminary issue of law under s 156 of the Companies Act 1965 contending that the minutes of the purported meeting having been signed and entered in the company's minutes book would deem D7 to D10 as the validly appointed directors of the company, until the contrary was proved by the plaintiffs, and that the plaintiffs' application was misconceived and unsubstantiated in law. It was also submitted for the defendants: (1) that the principles laid down in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 were not applicable to the plaintiffs' application, and that the defendants should not be restrained from

A exercising their powers and duties, unless the plaintiffs had an extremely strong case on the merits; and (2) that as there were no annual general meetings and no accounts of the company for the years 2001 to 2004, the injunction should be refused, as the plaintiffs were allegedly 'totally and absolutely guilty' of non-disclosure of important, relevant and material facts; and (3) that the first plaintiff's action against the B defendants should be set aside, dismissed or stayed, being a nullity as no valid authority had been given by the board of directors of the company or its majority shareholders in a general meeting to commence this action in the company's name and the solicitors who had commenced this action were never authorised to act for the company.

C

Held, allowing the plaintiffs' application and dismissing the defendants' application:

(1) Under s 156(2), the minutes shall be evidence of the proceedings to which they relate (see para 29). As the minutes are merely prima facie evidence, contrary D evidence may be adduced by the challenger(s) to contradict or supplement them (see para 30). As the parties were at liberty to prove the contrary to rebut the presumption under s 156(3), the minutes relating to the purported meeting remained arguable or triable issues at the trial of the action herein. Therefore the plaintiffs' application for interlocutory injunction was not misconceived and unsubstantiated (see para 33).

E

(2) The defendants' contention that the principles laid down in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 were not applicable to the plaintiffs' application for interlocutory injunction and that the defendants should not be restrained from exercising their powers and duties, unless the F plaintiffs had an extremely strong case on the merits, could not be upheld by this court (see para 35); *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 412; *Malli Dei & Anor v Kanchan Prava Dei* AIR 1973 Orissa 83; and *Bank Bumiputra (M) Bhd v Australia Furniture (M) Sdn Bhd* [1995] 2 AMR 1710 distinguished.

G (3) In the light of what had transpired at the purported meeting, including the alleged invalidity of the proceedings thereat, justice of the case was in favour of the plaintiffs (see para 48).

(4) D7 to D10's conduct had resulted in the letter given by OCBC Bank Melaka in which the company had maintained an account, stating to the effect that the H bank would not honour any cheque of the company issued on or after 26 April 2005 until sufficient explanation has been given by the plaintiffs' directors. That letter was issued by the bank at the instance of D7 who sought to change the company's mandate. D7 was also present at the registered office of the company and demanded to inspect the company's accounts. P2 to P7 were the I directors and majority shareholders of the company. The affairs of the company were largely ground to a halt. In such case, damages would not be an adequate remedy to the plaintiffs and hence justice of the case was in favour of the plaintiffs (see para 59).

(5) On the factual background of this case, the status quo prevailing immediately before the purported meeting should be maintained (see para 62); *Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors* [2000] 2 MLJ 277 followed.

(6) Since the plaintiffs had disclosed all the material facts on the basis of the plaintiffs' statement of claim and their affidavits in support of their application, there was no merit in the defendants' contention grounded on non-disclosure. Therefore justice of the case was in favour of the grant of the interlocutory injunction (see para 76).

(7) In relation to the hearing and determination of the plaintiffs' application, the defendants had conceded that there were at least four serious questions to be tried. These questions related to the episodes that had transpired at the purported meeting which was the subject matter of the first plaintiffs' action herein. The lack of proper authority on the part of the first plaintiffs' solicitors could not be said to be unarguable. Therefore, the first plaintiff's action did not constitute an abuse of the process of the court, and so did not warrant a stay or dismissal thereof, but must proceed on trial on its merits (see para 92).

[Bahasa Malaysia summary

Plaintif-plaintif kedua hingga ketujuh ('P2 hingga P7') merupakan pengarah plaintif pertama ('syarikat tersebut') dan pemegang saham majoriti manakala defendan-defendan pertama hingga kelapan ('D1 hingga D8') merupakan pemegang saham minoriti. Defendan kesembilan ('D9') merupakan proxy Tan Soon Hin Holdings Sdn Bhd ('Tan Soon Hin Holdings'). Manakalan defendan kesepuluh ('D10') merupakan wakil korporat Singapore Johore Express Ltd (Singapore Johore Express').

Plaintif-plaintif dan defendan-defendan telah, berkaitan syarikat itiu, telah memulakan pelbagai tindakan terhadap satu sama lain. Di mesyuarat syarikat pada 9 April 2005 ('mesyuarat yang dimaksudkan') dipengerusikan oleh D1 dan D7 sebulat suara telah: (1) enggan untuk mengiktiraf P2 hingga P7 sebagai pengarah syarikat itu dan mengisytiharkan bahawa P2 hingga P7 bukan lagi pengarah-pengarah; dan (2) mengisytiharkan D7 hingga D10 sebagai pengarah-pengarah syarikat tanpa apa-apa proses pilihanraya atau undian.

Plaintif dalam guaman ini memohon untuk satu injunksi interlokutori bahawa defendan-defendan D7 hingga D10 disekat sehingga selesai guaman ini daripada bertindak dan/atau mewakili diri mereka sendiri sebagai, atau melaksanakan apa-apa fungsi atau melaksanakan apa-apa tanggungjawab sebagai, pengarah atau pegawai syarikat tersebut atau dalam apa-apa kapasiti apa sekalipun termasuklah daripada memperkenalkan diri mereka sama ada secara langsung atau tidak langsung sebagai pengarah atau pegawai atau dalam apa-apa kapasiti lain apa sekalipun dalam syarikat tersebut. Defendan-defendan telah meohon agar diketepikan, ditolak atau digantung tindakan syarikat tersebut. Adalah dihujahkan bagi pihak plaintif-plaintif bahawa keadilan kes ini berpihak untuk membenarkan injunksi tersebut sementara menunggu perbicaraan tindakan ini.

Defendan-defendan telah menimbulkan persoalan awak undang-undnag di bawah s 156 Akta Syarikat 1965 dengan menegaskan bahawa minit-minit mesyuarat yang dimaksudkan setelah ditandatangani dan dimasukkan ke dalam buku minit syarikat

akan dianggap D7 hingga D10 sebagai pengarah-pengarah syarikat yang telah dilantik secara sah, sehinggalah ada yang dibuktikan bertentangan oleh plaintif-plaintif, dan bahawa permohonan plaintif-plaintif telah disalah tanggap dan tidak disokong oleh undang-undang. Ia juga dihujahkan bagi pihak defendan-defendan: (1) bahawa prinsip-prinsip yang dinyatakan dalam *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 dan *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 tidak terpakai kepada permohonan plaintif-plaintif, dan bahawa defendan-defendan tidak sepatutnya dihalang daripada menggunakan kuasa dan kewajipan mereka, kecuali jika plaintif-plaintif mempunyai kes yang kukuh berdasarkan merit; dan (2) memandangkan tiada mesyuarat am tahunan dan tiada akaun syarikat untuk tahun-tahun 2001 hingga 2004, injunksi tersebut patut ditolak, kerana plaintif-plaintif dikatakan 'totally and absolutely guilty' kerana ketidakpatuhan fakta-fakta yang pentingm relevan dan material; dan (3) bahawa tindakan plaintif pertama terhadap defendan-defendan patut diketepikan, ditolak atau digantung, kerana terbatal disebabkan tiada kuasa sah telah diberikan oleh lembaga pengarah syarikat atau pemegang saham majoritinya dalam mesyuarat am untuk memulakan tindakan ini dalam nama syarikat dan peguam yang memulakan tindakan ini tidak pernah diberikan kuasa untuk bertindak bagi pihak syarikat tersebut.

Diputuskan, membenarkan permohonan plaintif-plaintif dan menolak permohonan defendan-defendan:

(1) Di bawah s 136(2), suatu minit hendaklah menjadi keterangan prosiding yang berkaitan dengannya (lihat perenggan 29). Memandangkan minit itu keterangan prima facie, keterangan bertentangan boleh dikemukakan oleh pencabar untuk menyangkal atau menambahnya (lihat perenggan 30). Memandangkan pihak-pihak perlu membuktikan yang bertentangan untuk mematahkan andaian di bawah s 156(3), minit yang berkaitan dengan mesyuarat yang dimaksudkan masih merupakan persoalan-persoalan yang boleh dihujahkan atau perlu dibicarakan semasa perbicaraan tindakan tersbeut. Oleh itu, permohonan plaintif untuk injunksi interlokutori tidak disalah tanggap dan tidak disokong (lihat perenggan 33).

(2) Hujah defendan-defendan bahawa prinsip-prinsip yang dinyatakan dalam *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 dan *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 tidak terpakai kepada permohonan plaintif-plaintif untuk injunksi dan bahawa defendan-defendan hendaklah dihalang daripada menggunakan kuasa dan kewajipan mereka, kecuali jika plaintif-plaintif mempunyai kes yang kukuh berdasarkan merit, tidak boleh dikekalkan oleh mahkamah ini (lihat perenggan 35); *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 412; *Malli Dei & Anor v Kanchan Prava Dei* AIR 1973 Orissa 83; dan *Bank Bumiputra (M) Bhd v Australia Furniture (M) Sdn Bhd* [1995] 2 AMR 1710 dibeza.

(3) Berdasarkan apa yang berlaku di mesyuarat yang dimaksudkan itu, termasuklah prosiding yang dikatakan tidak sah itu keadilan kes itu menyebelahi plaintif-plaintif (lihat perenggan 48).

(4) Perbuatan D7 hingga D10 telah menyebabkan sepucuk surat diberikan oleh Bank OCBC Melaka di mana syarikat tersebut telah membuka akuan, menyatakan bahawa bank itu tidak akan mengeluarkan apa-apa cek yang dikeluarkan pada atau selepas 26 April 2005 sehingga penjelasan mencukupi diberikan oleh pengarah-pengarah plaintif-plaintif. Surat tersebut telah dikeluarkan oleh bank untuk D7 yang memohon penukaran mandate syarikat. D7 juga hadir di pejabat berdaftar syarikat dan menuntut akaun syairikat diperiksa. P2 hingga P7 adalah pengarah-pengarah dan pemegang-pemegang saham majoriti syarikat. Urusan syarikat kebanyakan tergendala. Dalam kes sedemikian, gantu rugi bukan rtemedi yang mencukupi untuk plaintif-plaintif dan justeru itu keadilan kes menyebelahi plaintif-plaintif (lihat perenggan 59).

(5) Berdasarkan latar belakang factual kes ini, status quo yang wujud sejurus sebelum mesyuarat yang dimaksudkan hendaklah kekal (lihat perenggan 62); *Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors* [2000] 2 MLJ 277 diikut.

(6) Memandangkan plaintif-plaintif telah mengemukakan semua fakta material berdasarkan penyataan tuntutan plaintif-plaintif dan affidavit-afidavit mereka yang menyokong permohonan mereka, tiada merit dalam hujah defendan-defendan berdasarkan ketidakpatuhan. Oleh itu keadilan kes membenarkan pemberian injunksi interlokutori tersebut (lihat perenggan 76).

(7) Berkaitan dengan perbicaraan dan penentuan permohonan plaintif-plaintif, defendan-defendan mengaku bahawa terdapat sekurang-kurangnya empat persoalan serius yang perlu dibicarakan. Persoalan-persoalan tersebut berkaitan kejadian yang berlaku di mesyuarat yang dimaksudkan itu yang merupakan perkara pokok tindakan plaintif pertama. Ketiadaan kuasa yang berpatutan di pihak peguam plaintif-plaintif tidak boleh dikatakan tidah boleh dihujahkan. Oleh itu, tindakan plaintif pertama tidak membentuk penyalahgunaan proses mahkamah, dan tidak mewajarkan penggantungan atau penolakannya, tetapi hendaklah diteruskan perbicaraan berdasarkan meritnya (lihat perenggan 92).]

Notes

For a case interim injunction to restrain defendant from acting as director of companies, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index para 2839.
For cases on minutes, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 406–415.

Cases referred to

All And Fahd Shobokshi Group Ltd v Moneim & Ors [1989] 1 WLR 710 (refd)
Amanah Merchant Bank Bhd v Lim Tow Choon [1994] 1 MLJ 413 (refd)
American Cyanamid Co v Ethicon Ltd [1975] AC 396 (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36
Bank Bumiputra Malaysia Berhad v Australia Furniture (M) Sdn Bhd [1995] 2 AMR 1710 (distd)
Creative Furnishing Sdn Bhd v Wong Koi [1989] 2 MLJ 153 (refd)
Damayanti Kantilal Doshi & Anor v Jigarlal Kantilal Doshi [2004] 1 MLJ 456 (refd)
Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors [2000] 2 MLJ 277 (folld)

A *Dormeuil Freres SA & Anor v Nicolian International (Textiles) Ltd* [1988] 3 All ER 197 (refd)
Fireproof Doors Ltd, Re, Umney v The Company [1916] 2 Ch 142 (refd)
Indian Zoedone Company, In re [1884] 26 Ch 17O (refd)
Interkol (M) Sdn Bhd v Bandar Utama City Promenade Sdn Bhd & Anor [1999] 5 CLJ 376 (refd)
B *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (refd)
Kepong Industrial Park Sdn Bhd & Ors v Teoh Seng Ann & Ors [1999] 6 MLJ 342 (refd)
LY Swee Co Sdn Bhd, Re [1970] 2 MLJ 107 (refd)
C *Lim Sung Huak & Ors v Sykt Pemaju Tanah Tikam Batu Sdn Bhd* [1993] 3 MLJ 527 (refd)
MBf Capital Bhd & Anor v Dato' Param Cumaraswamy [1997] 3 MLJ 300 (refd)
MN D'Cruz v K Sethu & Ors [1982] CLJ (Rep) 542 (refd)
Malli Dei & Anor v Kanchan Prava Dei AIR 1973 Orissa 83 (distd)
D *Natseven TV Sdn Bhd v Television New Zealand Limited* [2001] 4 AMR 4048 (refd)
Noor Jahan bte Abdul Wahab v Md Tusoff bin Amanshah & Anor [1994] 1 MLJ 156 (refd)
PMK Rajah v Worldwide Commodities Sdn Bhd & Ors [1985] 86 (refd)
Sarawak Building Supplies Sdn Bhd v Director of Forests & Ors [1991] 1 MLJ 211 (refd)
E *See Teow Chuan & Anor v Yam Tunku Nadzaruddin Ibni Tuanku Jaafar and 4 Ors* [1999] 7 CLJ 195 (refd)
Sing Lian Sdn Bhd, Re; Lim Jit Kim @ Lim Tian Jee & Ors v Goh Siew Koon @ Eng Sing Kuan & Ors [2005] 7 MLJ 297 (refd)
F *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 412 (distd)
Sundram Properties Sdn Bhd v Cyril Wettasinghe & Ors [1987] CLJ (Rep) 988 (refd)
Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd [1990] 3 MLJ 239 (refd)
Topps Co Inc, The v Mally Jaya Sdn Bhd [1998] 5 MLJ 744 (refd)
Tunas (Pte) Ltd v Mayer Investment Pte Ltd & Ors [1989] 2 MLJ 132 (refd)
G *Zaidin Abd Ghani @ Zaidin Stothard v Raja Raman Nair (Mohd Yusof & 4 Ors* [2001] 3 AMR 3032 (refd)

Legislation referred to

Companies Act 1965 s 156
Courts of Judicature Act 1964 s 25(2)
H Distress Act 1951 s 10
Rules of the High Court 1980 O 12 r 7(1), O 18 r 19(1), O 29
Trade Description Act 1972

Lim Kian Leong (Tan Shin Shin with him) (Lim Kian Leong & Co) for the plaintiffs.
SP Chandra (K Moganwith him) (SF Pang & Chandra) for the defendants.
I

Low Hop Bing J:

[1] There are two applications before me.

[2] The first application is encl (3) filed by the plaintiffs under O 29 of the Rules of the High Court 1980 for, inter alia, an interlocutory injunction:

(a) that the seventh defendant, Lim Jit Kim @ Lim Tian Jee ('D7'), the 8th defendant, Koh Ban Tong ('D8'), the ninth defendant, Tan Seng Sun ('D9') and the 10th defendant, Lee Kin Hong ('DIG'), jointly and/or severally, be restrained until the final disposal of this suit from acting and/or representing themselves to be, or exercising any of the functions or performing any duties of, directors or officers of Sing Lian Sdn Bhd, the first plaintiff ('the company') or in any capacity whatsoever including from holding themselves out whether directly or indirectly as directors or officers or in any other capacity whatsoever of the company;

(b) from interfering or attempting to interfere with the management of the affairs and business of the company including the exercise and performance by the second to seventh plaintiffs of their functions and duties as directors of the company ('the directors'); and

(c) that the first defendant, Lim Jit Teng @ Lim Tin Teng ('Dl'), the second defendant, Lim Jet Peng @ Thin Peng ('D2'), the third defendant, Koh Mun Wah ('D3'), the fourth defendant, Lim Fung Hsien ('D4'), the fifth defendant, Lim Ai Jee ('D5'), the sixth defendant, Ong Juat Kim ('D6W), and DD7 to 10 jointly and/or severally be restrained until the final disposal of this suit from convening and/or requisitioning any general meeting of the company to discuss and/or vote on the same and/or similar grounds in the purported meeting of the company held on 9 April 2005 ('the purported meeting').

[3] Unless otherwise stated or the context otherwise requires, a reference hereinafter to an order and rule is a reference to that order and rule in the Rules of the High Court 1980.

[4] Upon the plaintiffs' undertaking as to damages, an ex parte injunction was granted by me on 10 May 2005. On 31 May 2005, I granted an ad interim injunction until further order of the court. Before me now is the inter partes hearing.

[5] The second application is encl (22) filed by all the defendants under O 18 r 19(1)(d) for an order:

(a) to set aside, dismiss or stay the company's action; and

(b) to order Messrs Lim Kian Leong & Co, the plaintiffs' solicitors, to pay forthwith to all the defendants costs of this action, including encl (3) for interlocutory injunction.

FACTUAL BACKGROUND

[6] The disputes between the multiple parties herein are demonstrated by the numerous volumes of pleadings, applications, affidavits and submissions, which have now attained a height of some three feet, filed by the respective learned counsel who have done their Herculean best to make my duty less onerous.

A **[7]** The affidavits filed herein reveal the following.

[8] The directors of the company are also its majority shareholders while DD1 to 8 are the minority shareholders.

B **[9]** The company, formerly known as Sing Lian Express Sdn Bhd, was incorporated under the Companies Act 1965. As at 26 May 2005, the paid-up capital was RM4,395,948.

[10] D9 was the proxy of Tan Soon Hin Holdings Sdn Bhd ('Tan Soon Hin **C** Holdings') in the purported meeting.

[11] DIG was purportedly the corporate representative of Singapore Johore Express Ltd ('Singapore Johore Express').

D **[12]** Before the commencement of this suit, the company, the directors and some of the defendants were engaged in at least three separate pending actions viz:

i Kuala Lumpur High Court Civil Suit No S3–22–95 of 2001 where leave to show cause was granted upon the company's ex parte application against some **E** of the defendants, inter alia, for presenting a winding-up petition against the company three days before the inter paries hearing of the application for interim injunction to restrain the defendants from presenting the winding-up petition. The company's inter partes application for committal was dismissed and the same is pending appeal;

F ii Melaka High Court Winding Up Petition No 28–39 of 2001 presented by DD1 to 8, Tan Soon Hin Holdings, Singapore Johore Express and 13 others, against inter alia the first plaintiff. In 2004, after filing a new winding-up petition against, inter alia, the first plaintiff company, the petitioners applied to withdraw this petition. I had on 20 September 2005 allowed the withdrawal subject to terms; and

G

iii Melaka High Court Winding Up Petition No 28–23 of 2004 presented by DD1 to 8, Tan Soon Hin Holdings, Singapore Johore Express and 12 others against, inter alia, the first plaintiff. On the first plaintiff's application inter alia to strike out, I had on 7 December 2004 stayed the proceedings therein on grounds of multiplicity of proceedings. The first plaintiff, inter alia, **H** had appealed against my decision and the appeal is pending.

[13] On 3 May 2005, the plaintiffs in this action sought declarations, inter alia, that the purported meeting is void for illegality and to restrain DD7 to 10 from interfering with the directors' day to day management of the company. DD1 to 6 had **I** on 18 March 2005 issued a notice under s 145 of the Companies Act 1965 to call for the purported meeting.

[14] A reference hereinafter to a section is a reference to that section in the Companies Act 1965, unless otherwise stated or the context otherwise requires.

[15] On 23 March 2005, all the parties to the aforesaid actions as well as three other actions involving another company, Sing Hai Estates Bhd, agreed to meet on 7 April 2005 on a without prejudice basis to explore the prospect of a global settlement ('the settlement meeting'). A

[16] However, on 24 March 2005, the plaintiffs received a notice from DD1 to 6 calling for the purported meeting. B

[17] On 28 April 2005, the plaintiffs received another notice from DD1 to 6 asking for the company's audited accounts for the years 2001 to 2004.

C

[18] The settlement meeting proceeded between PP2 to 4 and five representatives of the opposing parties in all the aforesaid legal actions, and it was agreed that the parties would meet again to agree on the professional valuer to prepare reports on the company and Sing Hai Estates Bhd, for purposes of settlement. PP2 to 4 were under the impression that the purported meeting was to be adjourned as the company's audited accounts were not ready. D

[19] On 9 April 2005, PP2, 3, 5 to 7 (P3 attending on his own behalf, and also as proxy for P4 as well as the corporate representatives of three other corporate shareholders of the company) attended the purported meeting which they expected would be adjourned so as to enable the settlement meeting to proceed amicably. E Miss SF Pang was also present as the minority shareholders' solicitor ('the defendants' solicitor').

[20] PP2 and 3 were prevented from taking their seats in their capacity as the company's directors. Further P2 was not allowed to chair the purported meeting. F

[21] Despite protest by the directors, the purported meeting proceeded to appoint D1 to chair it, wherein, inter alia, DD1 and 7 unilaterally:

i on the advice of the defendants' solicitor, refused to recognise PP2 to 7 as the company's directors and declared that PP2 to 7 were no longer directors; G

ii proceeded with and refused to adjourn the purported meeting;

iii referred to and acted upon an alleged syndicated agreement which was not an item on the agenda;

iv rejected and refused to act on the plaintiffs' demand for polls on the relevant resolutions; H

v ignored the directors' consent to stand for re-election as directors;

vi declared DD7 to 10 as the company's directors without any election process or voting; and I

vii reappointed an auditor without any nomination or vote.

[22] On 24 May 2005, defendants obtained leave and filed conditional appearance.

A **[23]** On 27 May 2005, defendants filed encl (22) to, inter alia, set aside, dismiss or stay the first plaintiff's action.

PRELIMINARY ISSUE

B **[24]** Defendants' learned counsel Mr SP Chandra assisted by Mr K Mogan raised a preliminary issue of law under s 156 contending that the minutes of the purported meeting having been signed and entered in the company's minutes book would deem DD7 to 10 as the validly appointed directors of the company, until the contrary is proved by the plaintiff, and that encl (3) is misconceived and unsubstantiated in law, relying on, inter alia:

C

(i) *Amanah Merchant Bank Bhd v Lim Tow Choon* [1994] 1 MLJ 413 (SC);

(ii) *Re LY Swee Co Sdn Bhd* [1970] 2 MLJ 107 (HC); and

(iii) *KJ Aiyer's Judicial Dictionary* (13th Ed, 2001) at p 767.

D **[25]** Plaintiffs' learned counsel Mr Lim Kian Leong assisted by Miss Tan Shin Shin contended that the presumption under s 156 is rebuttable.

[26] Although the above submissions are based on the common ground of the rebuttable presumptions under s 156, the defendants have additionally submitted **E** that encl (3) is misconceived and unsubstantiated. Hence, it is necessary for me to embark upon a careful analysis of the authorities cited for the parties respectively.

[27] First, s 156 where relevant merits reproduction as follows:

F 156 Minutes of proceedings

(1) Every company shall cause -

(a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers (if any) to be entered in books kept for that purpose within fourteen days of the date upon which the relevant meeting was held; and

G

(b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minute so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

H

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings had thereat shall be deemed to have been duly had; and

(c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

I **[28]** In my view, s 156(1) makes it mandatory for a company to cause minutes of all proceedings of general meetings, board meetings and managers' meetings to be entered in the minutes books within 14 days of the relevant meeting and such minutes shall be signed by the chairman of the same meeting or the chairman of the next succeeding meeting.

[29] Under s 156(2), the minutes shall be evidence of the proceedings to which they relate. This evidence is merely prima facie evidence raising presumptions that the meeting had been duly held and convened, that proceedings had been duly had and that all appointments of officers or liquidators are valid. These presumptions are rebuttable by any party who is able to prove to the contrary: s 156(3).

[30] As the minutes are merely prima facie evidence, contrary evidence may be adduced by the challenger(s) to contradict or supplement them: *In re Indian Zoedone Company* (1884) 26 Ch 170 (CA England); *Re Fireproof Doors Ltd* [1916] 2 Ch 142 (High Court England); Walton Woon *Company Law* (2nd Ed) pp 204 & 205); Loh Siew Cheang *Corporate Powers Controls, Remedies and Decision-making* at p 566 para 8.4; and Dr Wong Kim Patt *Company Resolutions* p 41 para 3.6.

Amanah Merchant Banker, cited for the defendants, concerns the interpretation of a letter of guarantee wherein the material words in cl 17 were 'a notice so sent shall be deemed to be served on the day following that on which it is posted'. The Supreme Court speaking through Mohamed Dzaiddin SCJ (later CJ Malaysia) held that the expression 'shall be deemed' means 'shall be regarded'. As cl 17 did not contain the words 'until the contrary is proved' as found in s 156(3), I am of the view that the Supreme Court judgment is unhelpful to the defendants.

[31] The presumption of law as expounded in *KJ Aiyer's Judicial Dictionary* and relied on by the defendants is equally unsupportive, as the learned author there had added that such a presumption means that the court is bound to presume the fact is proved 'until evidence is given by the party interested to rebut or disprove it'.

[32] In my judgment, as the parties are at liberty to prove the contrary to rebut the presumption under s 156(3), the minutes relating to the purported meeting remain arguable or triable issues at the trial of the action herein. I am therefore unable to accept the defendants' contention that encl (3) is misconceived and unsubstantiated.

[33] As I consider *LY Swee & Co Sdn Bhd* to be more relevant to the defendants' application in encl (22), I shall analyse it at the hearing and determination of that enclosure later in this judgment.

INTERLOCUTORY INJUNCTION FUNCTIONS OF JUDGE

[34] It was stressed for the defendants that the principles laid down in *American Cyanamid Co v Ethicon Ltd.* [1975] AC 396 (HC) and *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (CA) are not applicable to encl (3), and that the defendants should not be restrained from exercising their powers and duties, unless the plaintiffs have an extremely strong case on the merits, citing:

(i) *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 412 (CA);

(ii) *Malli Dei & Anor v Kanchan Prava Dei* AIR 1973 Orissa 83; and

(iii) *Bank Bumiputra Malaysia Berhad v Australia Furniture (M) Sdn Bhd* [1995] 2 AMR 1710 (HC).

A **[35]** It was argued for the plaintiffs that the principles in *American Cyanamid* and *Keet Gerald Francis* are applicable to encl (3) and that the defendants may be restrained by an interlocutory injunction.

B **[36]** In my view, in so far as the grant or refusal of an interlocutory injunction is concerned, an analogy can hardly be drawn between an education authority in *Smith & Ors* and the individual defendants herein.

C **[37]** The facts in *Malli Dei* cited for the defendant, revolve around a nominee's entitlement to receive the insurance amount and have nothing to do with the heated disputes in company matters before me. I am unable to find any usefulness of this authority to the defendants' contention.

D **[37]** *Australia Furniture (M) Sdn Bhd*, cited for the defendants, concerns the execution of a writ of distress against which an injunction was sought to restrain further steps to be taken in execution thereof. I refused to grant the injunction as the appropriate procedure should have been by way of an application under s 10 of the Distress Act 1951. I am of the view that this authority is not of any assistance to the defendants.

E **[38]** In the circumstances, I am unable to uphold the defendants' contention herein.

F **[39]** At this juncture, it is necessary for me to consider the functions of a judge hearing an application for interlocutory injunction, as enunciated by the House of Lords in *American Cyanamid Co* and restated by our Court of Appeal in *Keet Gerald Francis* at pp 390–391, as follows:

(a) He should ask himself whether the totality of the facts presented before him disclosed a bona fide serious issue to be tried. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move on to the next step of his inquiry;

G (b) Having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by the grant, against the harm that would result from its refusal; and

H (c) The judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result between the date of the application and the trial proper and to maintain the status quo.

I (See also *Interkol (M) Sdn Bhd v Bandar Utama City Promenade Sdn Bhd & Anor* [1999] 5 CLJ 376, p 380 (HC);*See Teow Chuan & Anor v Yam Tunku Nadzaruddin Ibni Tuanku Jaafar & 4 Ors* [1999] 7 CLJ 195 (HC); and *Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors* [2000] 2 MLJ 277 (HC).

SERIOUS QUESTION(S) TO BE TRIED

[40] The plaintiffs have set out nine serious questions to be tried while the defendants conceded there were at least four such questions viz:

(i) whether the purported meeting was lawful and regular?

(ii) whether the appointment of D1 as chairman of the purported meeting was lawful and valid?

(iii) whether the appointment of DD7 to 10 as directors at the purported meeting was lawful and valid? and

(iv) whether the reference to and discussion of the syndicated agreement ought to have been put on the agenda of the notice calling for the purported meeting?

[41] My function herein has been made easier as it is common ground that there is a plenitude of serious questions to be tried.

[42] I shall therefore move on to the next step of my inquiry.

JUSTICE OF THE CASE

[43] It was submitted for the plaintiffs that justice of the case is in favour of the grant of the injunction pending the trial of this action.

[44] The defendants contended that granting the plaintiffs the injunction would be a travesty of justice as the defendants could manage the affairs of the company in a competent and responsible manner until the final disposal of this case.

[45] The answer to the above submissions is to be ascertained by examining the facts and circumstances of the case before me.

[46] As I have set out the factual background in considerable detail, I do not propose to embark on a repetition here, except to say that especially in the light of what had transpired at the purported meeting, including the alleged invalidity of the proceedings thereat, I hold that justice of the case is in favour of the plaintiffs.

[47] I shall revert to this principle later in my judgment, when I consider this injunctive relief as a discretionary remedy and the status quo.

DISCRETIONARY REMEDY AND STATUS QUO

[48] It was submitted for the defendants that this discretionary remedy should not be granted as damages would be more than an adequate remedy to the plaintiffs. Support was sought in:

(i) *MN D'Cruz v K Sethu & Ors* [1982] CLJ (Rep) 542 (HC);

(ii) *Interkol (M) Sdn Bhd v Bandar Utama City Promenade Sdn Bhd & Anor*;

A (iii) *Bank Bumiputra Malaysia Bhd v Australia Furniture (M) Sdn Bhd*; and

(iv) *Natseven TV Sdn Bhd v Television New Zealand Limited* [2001] 4 AMR 4048 (HC).

[49] The plaintiffs' response is that the above authorities cited for the defendants B do not deal with the fact situation in the instant case.

[50] Upon considering the above submissions, I am of the view that the parties are sharing the common ground that the injunctive relief should not be granted if damages would be an adequate remedy to the plaintiffs.

C

[51] Whether or not damages would provide an adequate remedy to the plaintiffs is a question of fact which can only be arrived at by considering and examining the surrounding circumstances in each particular case. For this purpose, the authorities cited for the defendants would require my prior consideration.

D

[52] In *MN D'Cruz*, the plaintiffs application for an ex parte injunction to restrain the defendants from continuing to act as committee members of a registered society was dismissed by VC George J (later JCA). The issue of whether damages would be an adequate remedy was not ventilated before the learned judge.

E

[52] *Interko* concerns the plaintiff as the tenant of the defendants. The plaintiff had fallen into arrears in the payment of rentals, pursuant to which the defendants had obtained a writ of distress against the plaintiff. The plaintiff sought an interlocutory injunction against the defendants to allow the plaintiff to enter the premises, and to prevent the defendants from removing the plaintiffs goods from the premises, and F also to prevent the execution of the writ of distress. After an empirical analysis of the facts and the law, I had no difficulty in dismissing the plaintiffs application for injunction.

[52] *Australia Furniture* has been considered above. The factual background there G is substantially similar to *Interkol*.

[53] The plaintiff in *Natseven TV* sought an injunction to restrain the defendant from proceeding with a winding-up petition in the face of the plaintiffs three admissions of indebtedness to the defendant. On these admissions by the plaintiff H together with the grounds stated in my judgment, the result was obvious ie the dismissal of the plaintiffs application for injunction.

[54] I am unable to see how the above authorities can support the defendants' contention herein.

I

[55] Reverting to the factual background before me, it is to be observed that DD7 to 10's conduct had resulted in the letter given by OCBC Bank Melaka in which the company has maintained an account, stating to the effect that the bank would not honour any cheque of the company issued on or after 26 April 2005 until sufficient explanation has been given by the plaintiffs' directors. That letter was issued by the

bank at the instance of D7 who sought to change the company's mandate. D7 was also present at the registered office of the company and demanded to inspect the company's accounts (see para 39 p 17 of the plaintiffs' affidavit in support of encl (3)). PP2 to 7 are the directors and majority shareholders of the company. The affairs of the company are largely ground to a halt. I am of the view that damages would therefore not be an adequate remedy to the plaintiffs and hence justice of the case is in favour of the plaintiffs.

[56] The principle under this head would also require me to examine the status quo.

[57] In considering the status quo, I find it instructive to refer to the judgment of the Court of Appeal delivered by Gopal Sri Ram JCA in *Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors* [2000] 2 MLJ 277 (CA). There, the substance of the dispute related to the alleged removal of certain directors at the board meeting held on 31 December 1998. The issue before the Court of Appeal was whether the status quo should be the status quo as at 31 December 1998 or the much later date of the plaintiffs application for injunction. The Court of Appeal held that the status quo should be the status quo at the time of the impugned meeting of 31 December 1998 ie. as at the date of the passing of the impugned resolutions and the court should be concerned with the question whether the status quo prevailing immediately before the passing of the impugned resolutions should be maintained.

[58] In the light of the above judgment of the Court of Appeal, I should in the instant case only be concerned with the question whether the status quo prevailing immediately before the purported meeting should be maintained. On the factual background as alluded to above, I am of the view that that status quo should be maintained.

NON-DISCLOSURE

[59] It is the defendants' contention that as there were no annual general meetings and no accounts of the company for the years 2001 to 2004, the injunction should be refused, as the plaintiffs were allegedly 'totally and absolutely guilty' of:

(a) non-disclosure of important, relevant and material facts;

(b) concealment of cogent and vital information and documents;

(c) lies and deception perpetrated on the defendants; and

(d) misleading the court, relying on:

(i) *The Topps Co Inc v Malty Jaya Sdn Bhd* [1998] 5 MLJ 744 (HC);

(ii) *Natseven TV Sdn Bhd* (HC);

(iii) *Lim Sung Huak & Ors v Sykt Pemaju Tanah Tikam Batu Sdn Bhd* [1993] 3 MLJ 527 (HC);

(iv) *Tunas (Pte) Ltd v Mayer Investment Pte Ltd & Ors* [1989] 2 MLJ 132 (HC Singapore);

A (v) *Creative Furnishing Sdn Bhd v Wong Koi* [1989] 2 MLJ 153 (SC);

(vi) *Kepong Industrial Park Sdn Bhd & Ors v Teoh Seng Aun & Ors* [1999] 6 MLJ 342;

(vii) *Zaidin Abd Ghani @ Zaidin Stothard v Raja Raman Nair (Mohd Yusof & 4 Ors* [2001] 3 AMR 3032 (HC);

B (viii) *Ali & Fahd Shobokshi Group Ltd v Moneim & Ors* [1989] 1 WLR 710 (HC); and

(ix) *PMK Rajah v Worldwide Commodities Sdn Bhd & Ors* [1985] 86 (HC).

C

[60] In response, it was stressed for the plaintiffs that encl (3) is entirely based on the allegedly illegal events that had taken place at the purported meeting and was not concerned with any annual general meeting or the company accounts, in which case they were not material to encl (3), and that all pending litigations between the parties have been disclosed by the plaintiffs, who relied on:

D

(i) *Damayanti Kantilal Doshi & Anor v Jigarlal Kantilal Doshi* [2004] 1 MLJ 456 (CA); and

(ii) *Noor Jahan bte Abdul Wahab v Md Yusoff bin Amanshah & Anor* [1994] 1 MLJ 156 (SC).

E

[61] On my part, at this juncture, it is appropriate to analyse the authorities cited for the defendants.

F **[62]** In *The Topps Co Inc*, the applicant had obtained an ex parte trade description order pursuant to the Trade Description Act 1972 on the basis of an affidavit affirmed by a deponent who described himself as a general manager when he was actually an undischarged bankrupt The respondent then applied to set aside the ex parte order on the ground of the deponent's failure to make full and frank disclosure of all material facts. I allowed the respondent's application and set aside the ex parte order.

G

[63] The plaintiff in *Natseven TV Sdn Bhd*, had applied for an interim injunction to restrain the defendant from proceeding with its winding-up petition against the plaintiff, but its affidavit in support had failed to disclose, inter alia, the plaintiffs' admission of indebtedness of a certain sum of money for which a statutory notice H under s 218 had been issued by the defendant to the plaintiff. In view of the plaintiffs' non-disclosure of, inter alia, this material fact, I dismissed the plaintiffs' application for interim injunction.

[64] In *Lim Sung Huak*, the plaintiffs obtained an injunction restraining the I defendant from, inter alia, selling two lots of land, one lot being registered in the name of the defendant company while the other, in the name of an individual as trustee. The plaintiffs based their application for the injunction on the sale and purchase agreements alleged to have been entered into between the defendant company and the plaintiffs or the original purchasers who have assigned their rights to the plaintiffs, when actually all the agreements, except for one, were entered into

with a firm and not the defendant company. KC Vohrah J (later JCA) set aside the injunction, on the ground, inter alia, that the statement of claim and the affidavit of the plaintiff were misleading.

[65] From the above authorities, it can be gleaned that an applicant for an ex parte injunction has a duty to make full and frank disclosure of all material facts (see also *Tunas* per Coomaraswamy J (Singapore); *Creative Furnishing Sdn End* (SC) per Mohamed Azmi SCJ (as he then was); *Kepong Industrial Park Sdn Bhd* per Kamalanathan Ratnam J; *Zaidin Abd Ghani @ Zaidin Stothard* per Ramly bin Ali JC (now J); per Mervyn Davies J; and *PMK Rajah* per Zakaria Yatim J. (later FCJ)).

[66] In my judgment, the determination of the defendant's contention of non-disclosure is to be based on the subject matter of the suit herein and encl (3) both of which fall within a clearly defined compass pertaining to the purported meeting.

[67] The question that has to be addressed is whether the annual general meetings and the audited accounts of the company for the years 2001 to 2004 were material to the plaintiffs' suit and consequently to the plaintiffs' application in encl (3) for the exparte injunction.

[68] In ordinary parlance, to the plaintiffs, a fact is material if it is relevant to their case, on the basis of their statement of claim and encl (3) by which the plaintiffs are bound.

[69] A proper perusal of the plaintiffs' statement of claim reveals, inter alia, the capacities of the respective parties in the plaintiffs' suit which is wholly and exclusively based on the purported meeting, the numerous episodes that had transpired in the purported meeting, the illegality allegedly occasioned by the defendants and the prayers sought by the plaintiffs which in essence were for declarations that all the defendants' deeds and the episodes that had transpired at the purported meeting were illegal and void. The plaintiffs' suit and the plaintiffs' application in encl (3) for ex parte injunction and now inter paries hearing were not based on the annual general meetings and the audited accounts of the company for the years 2001 to 2004, which are therefore neither material nor relevant to the plaintiffs' case.

[70] Quite apart from that, it is now trite law that the paramount consideration is justice of the case as has been alluded above. This proposition has been established in authoritative judgments.

[71] By way of illustration, in *Damayanti*, one of the issues before the Court of Appeal was whether the learned judicial commissioner was correct in setting aside an ex parte injunction on the ground that there was a material non-disclosure at the ex parte application stage. Richard Malanjum JCA (now FCJ) speaking for the Court of Appeal in para 23 held that the paramount consideration is whether the justice of the case requires the granting of the interim injunction on the facts presented in the

A inter partes hearing despite the making of an ex parte order earlier on. His Lordship followed *Noor Jahan* where Edgar Joseph Jr J (later SCJ) referred to the judgment of Sir Nicholas Browne-Wilkinson VC in*Dormeuil Freres SA & Anor v Nicotian International (Textiles) Ltd* [1988] 3 All ER 197 to the effect that if in the circumstances existing when the matter comes before the court inter partes, justice
B requires an order either continuing the ex parte injunction or the grant of fresh injunction, such an order can be made notwithstanding the earlier failure of the plaintiff to make such disclosure.

[72] Applying the above principles to the factual background in which the
C plaintiffs had disclosed all the material facts on the basis of the plaintiffs statement of claim and their affidavits in support of encl (3), I am unable to find any merits in the defendants' contention grounded on non-disclosure. I am therefore of the view that justice of the case is in favour of the grant of the interlocutory injunction.

D AUTHORITY OF SOLICITORS

[73] Defendants' application in encl (22) was made pursuant to O 18 r 19(1)(d) challenging the authority of solicitors Messrs Lim Kian Leong in commencing this action. It was submitted that the first plaintiffs action against the defendants should be set aside, dismissed or stayed, being a nullity as no valid authority had been given
E by the board of directors of the company or its majority shareholders in a general meeting to commence this action in the company's name and the solicitors who had commenced this action were never authorised to act for the company, citing:

(i) s 156;

F (ii) *Re LY Swee & Co Sdn Bhd*;

(iii) *Sarawak Building Supplies Sdn Bhd v Director of Forests & Ors* [1991] 1 MLJ 211 (HC);

(iv) *Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd* [1990] 3 MLJ 239 (HC); and

G

(v) *Sundram Properties Sdn Bhd v Cyril Wettasinghe & Ors* [1987] CLJ (Rep) 988 (HC).

[74] For the company, it was stressed that this is not a plain and obvious case to
H justify the order sought by the defendants, citing *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 (SC).

[75] I shall first consider *Re LY Swee & Co Sdn Bhd* where the minutes of the directors' meeting in relation to the appointment of the company's solicitors had not
I been entered in the company's minute book within 14 days of the meeting and that was held to be in contravention of s 156, and so the validity of the appointment was successfully challenged on that ground: per Abdul Hamid J (later CJ (Malaya)). However, it is significant to note that the issue of the abuse of the process of the court under O 18 r 19(1)(d) was not before his Lordship who also did not strike out the petition. Hence, that judgment must be seen in that light.

[76] *Sarawak Building Supplies* concerns an application by the defendant pursuant to O 12 r 7(1) for an order, inter alia, that the action filed in the name of the plaintiff-company be struck out, dismissed or stayed. The judgment of Haidar J (later CJ (Malaya)) was based on O 12 r 7(1) which where relevant merits reproduction as follows:

> 7. Application to set aside writ etc.
>
> (1) A defendant to any action may… if he has entered a conditional appearance apply to the court for an order setting aside the writ…

[77] I would observe that O 12 r 7(1) is intended to enable a defendant to obtain an order to set aside the writ, eg where such defendant is claiming immunity from legal process and that the court had no jurisdiction to hear the plaintiffs claim: *MBf Capital Bhd & Anor v Dato' Param Cumaraswamy* [1997] 3 MLJ 300; and *Malaysian High Court Practice 1998 Desk Edition* p 218.

[78] It is significant to note that O 12 r 7(1) does not contain provisions corresponding to O 18 r 19(1)(d) and so under O.12 r7(l) different considerations would apply.

[79] O 18 r 19(1)(d) had never been ventilated before his Lordship in Sarawak Building Supplies, supra. Hence, I am of the view that the defendants are unable to derive any assistance from *Sarawak Building Supplies*.

[80] In *Syawal Enterprise*, one Soo Seng Chuan had instructed a firm of solicitors to take out a writ on behalf of the first plaintiff, a registered company although he was entered in the books of the first plaintiff as a minority shareholder. VC George J (later JCA) allowed the defendant's application under O 18 r 19 to strike out the plaintiffs writ on the ground that the firm of solicitors had no proper authority to cause the writ to be issued on behalf of the first plaintiff.

[81] It is to be noted that in relation to encl (22) before me, it has never been doubted that the directors are the majority shareholders of the company. Hence, the facts in *Syawal Enterprise* are readily distinguishable.

[82] In *Sundaram Properties*, the summons in chambers of the first and second defendants sought to strike out the writ on the ground that it was instituted by persons who were not even registered shareholders. Peh Swee Chin J (later FCJ) at p 992e-f arrived at the inescapable conclusion that it was filed without authority and was irregular, thereby allowing the application and struck out the writ.

[83] In the case before me, the company itself has filed the action and the other plaintiffs are registered majority shareholders and directors of the company. The factual matrix is therefore readily distinguishable. Further, it is unclear whether the defendants before his Lordship was relying on O 18 r 19(1)(d) where relevant provides as follows:

A 19 Striking out

(1) The court may at any stage of the proceedings order to be struck out any writ in the action on the ground that —

(a) …

(b) …

B

(c) …

(d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed as the case may be.

(Emphasis added.)

C

[84] The part of the prayer sought by the defendants to 'set aside' the first plaintiffs action does not appear to come within the ambit and purview of O 18 r 19(1)(d) which provides for a striking out. However, as the other prayers viz 'to stay or dismiss' the first plaintiffs action are within the final sentence under O 18 r 19(1), I shall proceed to consider encl (22) on that basis.

D

[85] In my judgment, the final sentence under O 18 r 19(1)(d) must be construed in the context of whether there is any abuse of the process of the court.

E

[86] The locus classicus of O 18 r 19 is to be found in *Bandar Builder* where the Supreme Court through the judgment of Mohamed Dzaiddin SCJ enunciated, inter alia, as follows:

(i) The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.

F

(ii) So long as the pleadings disclosed some cause of action or raised some question fit to be decided by the judge, the mere fact that the case was weak and not likely to succeed at the trial was no ground for the pleadings to be struck out. It cannot be said that the pleadings were otherwise an abuse of the process of the court.

G

[87] I would respectfully add that it is only in plain and obvious case that an action should be stayed or dismissed under O 18 r 19(1)(d).

H

[88] As had been analysed above in relation to the hearing and determination of encl (3), the defendants have conceded that there were at least four serious questions to be tried. These questions as enumerated above relate to the episodes that had transpired at the purported meeting which is now the subject matter of the first plaintiffs action herein. The lack of proper authority on the part of the first plaintiffs solicitors herein cannot be said to be unarguable. In my view, the first plaintiffs action

I

does not constitute an abuse of the process of the court, and so does not warrant a stay or dismissal thereof, but must proceed on trial on its merits.

CONCLUSION

[89] On the foregoing grounds, I allow the plaintiffs' application in encl (3) and make an order in terms thereof, and dismiss the defendants' application in encl (22), with costs of both applications to the plaintiffs.

Plaintiffs' application allowed.

Reported by Loo Lai Mee